

Senate Study Bill 3199

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO=CHAIRPERSONS KREIMAN
AND MILLER)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the probate and trust codes.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 5256SC 81
4 rh/sh/8

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1 1 Section 1. Section 249A.3, subsection 11, paragraph d,
1 2 Code Supplement 2005, is amended to read as follows:
1 3 d. ~~Failure Unless a surviving spouse is precluded from~~
1 4 ~~making an election under the terms of a premarital agreement,~~

1 5 ~~the failure~~ of a surviving spouse to take an elective share
1 6 pursuant to chapter 633, division V, constitutes a transfer of
1 7 assets for the purpose of determining eligibility for medical
1 8 assistance to the extent that the value received by taking an
1 9 elective share would have exceeded the value of the
1 10 inheritance received under the will.

1 11 Sec. 2. Section 556.18, subsection 1, Code 2005, is
1 12 amended to read as follows:

1 13 1. Except as provided in subsection 3, all funds received
1 14 under this chapter, including the proceeds from the sale of
1 15 abandoned property under section 556.17, shall be deposited
1 16 quarterly by the treasurer of state in the general fund of the
1 17 state. However, the treasurer of state shall retain in a
1 18 separate trust fund a sufficient amount from which the
1 19 treasurer of state shall make prompt payment of claims duly
1 20 allowed under section 556.20. Before making the deposit, the
1 21 treasurer of state shall record the name and last known
1 22 address of each person appearing from the holders' reports to
1 23 be entitled to the abandoned property and the name and last
1 24 known address of each insured person or annuitant, and with
1 25 respect to each policy or contract listed in the report of a
1 26 life insurance corporation, its number, the name of the
1 27 corporation, and the amount due. The record shall be
1 28 available for public inspection at all reasonable business
1 29 hours. ~~The treasurer of state shall provide the name and~~
1 30 ~~social security number of a person entitled to abandoned~~
1 31 ~~property pursuant to this chapter to the department of human~~
1 32 ~~services for purposes of determining the person's eligibility~~
1 33 ~~for medical assistance pursuant to section 249A.3 or for the~~
1 34 ~~reimbursement of funds pursuant to section 249A.5, but such~~
1 35 ~~records shall be considered confidential.~~

2 1 Sec. 3. Section 556.19, Code 2005, is amended to read as
2 2 follows:

2 3 556.19 CLAIM FOR ABANDONED PROPERTY PAID OR DELIVERED.

2 4 Any person claiming an interest in any property delivered
2 5 to the state under this chapter may file a claim thereto or to
2 6 the proceeds from the sale thereof on the form prescribed by
2 7 the state treasurer. ~~For purposes of this section, "person"~~
2 8 ~~includes the department of human services entitled to money or~~
2 9 ~~property of a decedent pursuant to section 249A.5.~~

2 10 Sec. 4. Section 633.237, Code Supplement 2005, is amended
2 11 to read as follows:

2 12 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

2 13 1. ~~The surviving spouse, or the surviving spouse's~~
2 14 ~~conservator, may voluntarily elect to take the testamentary or~~
2 15 ~~intestate share or elective share pursuant to this section.~~

2 16 2. ~~If a voluntary election has not been filed within one~~

2 17 month of the date of the second publication of notice of
2 18 appointment of the personal representative or of the notice of
2 19 trust, and the surviving spouse is not a personal
2 20 representative or the trustee, all of the following shall
2 21 apply:

2 22 1- a. Following the appointment of a personal
2 23 representative of the estate of the decedent, who is not the
2 24 spouse, the personal representative shall cause to be served a
2 25 written notice upon the surviving spouse pursuant to section
2 26 633.40, subsection 5, notifying the surviving spouse that
2 27 unless, within four months after service of the notice, the
2 28 spouse files an election in writing with the clerk of court
2 29 electing the share as set forth in section 633.236 and
2 30 sections 633.238 through 633.246, the spouse shall be deemed
2 31 to take under the will or to receive the intestate share. If,
2 32 within the four-month period following service of the notice,
2 33 an affidavit is filed setting forth that the surviving spouse
2 34 is incapable of making the election and does not have a
2 35 conservator, the personal representative shall make
3 1 application to the court for an order pursuant to section
3 2 633.244.

3 3 2- b. Following the death of a settlor of a revocable
3 4 trust, the trustee of such revocable trust who is not the
3 5 spouse shall cause to be served a written notice upon the
3 6 surviving spouse pursuant to section 633.40, subsection 5,
3 7 notifying the surviving spouse that unless, within four months
3 8 after service of the notice, the spouse files an election with
3 9 the trustee electing the share as set forth in section 633.236
3 10 and sections 633.238 through 633.246, the spouse shall be
3 11 deemed to take under the terms of the revocable trust. If,
3 12 within the four-month period following service of the notice,
3 13 an affidavit is filed setting forth that the surviving spouse
3 14 is incapable of making the election and does not have a
3 15 conservator, the trustee shall make application to the court
3 16 for an order pursuant to section 633.244.

3 17 3- c. If the surviving spouse has a conservator, notice
3 18 shall be given to the conservator and the spouse pursuant to
3 19 subsections 1 and 2.

3 20 4- d. The notice provisions under subsections 1 and 2 are
3 21 not applicable if the surviving spouse is a personal
3 22 representative of the estate or a trustee of a revocable
3 23 trust. If the surviving spouse fails to file an election
3 24 under this section within four months of the decedent's death,
3 25 it shall be conclusively presumed that the surviving spouse
3 26 elects to take under the will, receive the intestate share, or
3 27 take under the revocable trust.

3 28 5- e. Upon application of the surviving spouse or the
3 29 spouse's conservator filed before the time for making the
3 30 election expires, the court may extend the period in which the
3 31 surviving spouse may make the election.

3 32 Sec. 5. Section 633.246A, Code Supplement 2005, is amended
3 33 to read as follows:

3 34 633.246A MEDICAL ASSISTANCE ELIGIBILITY.

3 35 ~~Failure Unless precluded from doing so under the terms of a~~
4 1 ~~premarital agreement, the failure~~ of a surviving spouse to
4 2 make an election under this division constitutes a transfer of
4 3 assets for the purpose of determining eligibility for medical
4 4 assistance pursuant to chapter 249A to the extent that the
4 5 value received by making the election would have exceeded the
4 6 value of property received absent the election.

4 7 Sec. 6. Section 633.356, subsection 8, paragraph b, Code
4 8 2005, is amended to read as follows:

4 9 b. When the department of human services is entitled to
4 10 money or property of a decedent pursuant to section 249A.5,
4 11 subsection 2, and no affidavit has been presented by a
4 12 successor of the decedent as defined in subsection 2, within
4 13 ninety days of the date of the decedent's death, the funds in
4 14 the account, up to the amount of the claim of the department,
4 15 shall be paid to the department upon presentation by the
4 16 department or an entity designated by the department of an
4 17 affidavit to the holder of the decedent's property. Such
4 18 affidavit shall include the information specified in
4 19 subsection 3, except that the department may submit proof of
4 20 payment of funeral expenses as verification of the decedent's
4 21 death instead of a certified copy of the decedent's death
4 22 certificate. The amount of the department's claim shall also
4 23 be included in the affidavit, which shall entitle the
4 24 department to receive the funds as a successor of the
4 25 decedent. The department shall issue a refund within sixty
4 26 days to any claimant with a superior priority pursuant to
4 27 section 633.425, if notice of such claim is given to the

4 28 department, or to the entity designated by the department to
4 29 receive notice, within one year of the department's receipt of
4 30 funds. This paragraph shall apply to accounts of the decedent
4 31 transferred to the custody of the treasurer of state as
4 32 unclaimed property pursuant to chapter 556.

4 33 Sec. 7. Section 633A.3102, subsection 6, Code Supplement
4 34 2005, is amended by striking the subsection.

4 35 Sec. 8. Section 633A.3103, Code Supplement 2005, is
5 1 amended to read as follows:

5 2 633A.3103 OTHER RIGHTS OF SETTLOR.

5 3 Except to the extent the terms of the trust otherwise
5 4 provide, while a trust is revocable ~~and the individual holding~~
5 5 ~~the power to revoke the trust is competent~~, all of the
5 6 following apply ~~unless the trustee has actual knowledge that~~
5 7 ~~the individual holding the power to revoke the trust is not~~
5 8 ~~competent~~:

5 9 1. The holder of the power, and not the beneficiary, has
5 10 the rights afforded beneficiaries.

5 11 2. The duties of the trustee are owed to the holder of the
5 12 power.

5 13 3. The trustee shall follow a written direction given by
5 14 the holder of the power, or a person to whom the power has
5 15 been delegated in writing, without liability for so doing, so
5 16 long as the action by the delegate is authorized by the trust
5 17 ~~unless the trustee has actual knowledge that the direction~~
5 18 ~~violates the terms of the trust.~~

5 19 Sec. 9. Section 633A.3104, Code Supplement 2005, is
5 20 amended to read as follows:

5 21 633A.3104 CREDITOR CLAIMS CLAIMS AGAINST REVOCABLE TRUST.

5 22 1. During the lifetime of the settlor, the trust property
5 23 of a revocable trust is subject to the ~~claims debts~~ of the
5 24 ~~settlor's creditors settlor~~ to the extent of the settlor's
5 25 power of revocation.

5 26 2. Following the death of a settlor, the property of a
5 27 revocable trust subject to the settlor's power of revocation
5 28 at the time of death is subject to the ~~claims debts~~ of the
5 29 ~~settlor's creditors settlor~~ and ~~costs of administration~~
5 30 ~~charges~~ of the settlor's estate to the extent of the value of
5 31 the property over which the settlor had a power of revocation,
5 32 if the settlor's estate is inadequate to satisfy those ~~claims~~
5 33 ~~debts and costs charges.~~

5 34 3. ~~If a revocable trust becomes subject to the debts of a~~
5 35 ~~settlor and the charges of the settlor's estate pursuant to~~
6 1 ~~this section, following the payment of the proper costs of~~
6 2 ~~administration of the trust and any claims against the trust,~~
6 3 ~~the debts and charges of the settlor's estate payable by the~~
6 4 ~~trust shall be classified pursuant to sections 633.425 and~~
6 5 ~~633.426 as such sections exist on the date of the settlor's~~
6 6 ~~death and paid in the order listed therein to the extent the~~
6 7 ~~settlor's estate is inadequate to satisfy the listed debts and~~
6 8 ~~charges.~~

6 9 Sec. 10. Section 633A.3105, subsection 2, Code Supplement
6 10 2005, is amended to read as follows:

6 11 2. Property in trust subject to a presently exercisable
6 12 general power of appointment is chargeable with the ~~claims~~
6 13 ~~debts of the holder's creditors holder~~ and ~~costs of~~
6 14 ~~administration charges~~ of the holder's estate to the same
6 15 extent as if the holder was a settlor and the power of
6 16 appointment was a power of revocation.

6 17 Sec. 11. Section 633A.3109, Code Supplement 2005, is
6 18 amended to read as follows:

6 19 633A.3109 NOTICE TO CREDITORS, CLAIMANTS, HEIRS, SPOUSE,
6 20 AND BENEFICIARIES.

6 21 1. As used in this section, "heir" means only such person
6 22 ~~as who~~ would, in an intestate estate, be entitled to a share
6 23 under section 633.219.

6 24 2. ~~A creditor of a deceased settlor of a revocable trust~~
6 25 ~~must bring suit to enforce its claim against the assets of the~~
6 26 ~~decedent's trust within one year of the decedent's death or be~~
6 27 ~~forever barred from collection against the trust assets. If~~
6 28 ~~the notice provided for in subsection 3 has not been published~~
6 29 ~~and if a probate administration is commenced for the decedent~~
6 30 ~~within one year of the decedent's date of death and notice is~~
6 31 properly given pursuant to section 633.230 or 633.304, a
6 32 creditor's rights shall be determined under those sections and
6 33 section 633A.3104.

6 34 3. ~~If no notice is given to creditors and heirs pursuant~~
6 35 ~~to subsection 2, a creditor's rights may~~ Except as provided in
7 1 subsections 2 and 4, the rights of creditors against assets of
7 2 the trust and those of heirs to contest the trust shall be
7 3 established or terminated ~~if by~~ the trustee ~~gives~~ giving

7 4 notice as follows:

7 5 a. The trustee shall publish a notice once each week for
7 6 two consecutive weeks in a daily or weekly newspaper of
7 7 general circulation published in the county in which the
7 8 decedent was a resident at the time of death, and in any
7 9 county of which the decedent was a nonresident but in which
7 10 some real estate of the trust is located. If the decedent was
7 11 not a resident of Iowa, but the principal place of
7 12 administration is in Iowa, the trustee shall publish notice in
7 13 the county that is the principal place of administration
7 14 pursuant to section 633A.6102.

~~7 15 b. If at any time during the pendency of the trust
7 16 administration the trustee has knowledge of the name and
7 17 address of a person believed to own or possess a claim which
7 18 will not, or may not, be paid or otherwise satisfied during
7 19 administration, the trustee shall provide a notice by ordinary
7 20 mail to each such claimant at the claimant's last known
7 21 address. As soon as practicable, the trustee shall give
7 22 notice by ordinary mail to the surviving spouse, the heirs of
7 23 the decedent, and each beneficiary under the trust whose
7 24 identities are reasonably ascertainable, at such person's last
7 25 known address.~~

~~7 26 c. As soon as practicable, the trustee shall give a notice
7 27 by ordinary mail to the surviving spouse, the heirs of the
7 28 decedent, and each beneficiary under the trust whose
7 29 identities are reasonably ascertainable, at such persons' last
7 30 known addresses. If at any time during the pendency of the
7 31 trust administration the trustee has knowledge of the name and
7 32 address of a person believed to own or possess a claim which
7 33 will not, or may not, be paid or otherwise satisfied during
7 34 administration, the trustee shall provide a notice by ordinary
7 35 mail to each such creditor at the creditor's last known
8 1 address stating the decedent settlor's date of death and that
8 2 the claim shall be forever barred unless proof of the
8 3 creditor's claim is mailed to the trustee by certified mail,
8 4 return receipt requested, within the later to occur of sixty
8 5 days from the second publication of notice or thirty days from
8 6 the date of mailing of the notice.~~

~~8 7 d. The notice in paragraphs "a", and "b", and "c" shall
8 8 include notification of the decedent's death, and the fact
8 9 that any action to contest the validity of the trust must be
8 10 brought within the later to occur of sixty days from the date
8 11 of the second publication of the notice made pursuant to
8 12 paragraph "a" or thirty days from the date of mailing of the
8 13 notice pursuant to paragraph "b" or "c" and that any claim
8 14 against the trust assets will be forever barred unless proof
8 15 of a creditor's claim is mailed to the trustee by certified
8 16 mail, return receipt requested, within the later to occur of
8 17 sixty days from the second publication of notice or thirty
8 18 days from the date of mailing the notice, if required. A
8 19 person who does not make a claim within the appropriate period
8 20 is forever barred.~~

~~8 21 e. The trustee shall give notice to debtors to make
8 22 payment, and to creditors having claims against the trust
8 23 assets to mail proof of their claim to the trustee via
8 24 certified mail, return receipt requested, within the later to
8 25 occur of sixty days from the second publication of the notice
8 26 or thirty days from the date of mailing of the notice, or
8 27 thereafter be forever barred.~~

~~8 28 4. If notice has not been published or given as provided
8 29 in subsection 2 or 3, a creditor of a deceased settlor of a
8 30 revocable trust must bring suit to enforce the creditor's
8 31 claim against the assets of the decedent's trust within one
8 32 year of the decedent's death or be forever barred from
8 33 collecting against the trust assets unless the trustee has
8 34 failed to comply with subsection 3, paragraph "c". The one=
8 35 year limitation period shall not be extended by the
9 1 commencement of probate administration for the settlor more
9 2 than one year following the settlor's death.~~

9 3 ~~4- 5.~~ The notice described in subsection 3 shall be
9 4 substantially in the following form:

9 5 To all persons regarding . . . , deceased, who died on or
9 6 about . . . , (year) . . . You are hereby notified that . . . is
9 7 the trustee of the . . . Trust. At this time, no probate
9 8 administration is contemplated with regard to the above=
9 9 referenced decedent's estate.

9 10 Any action to contest the validity of the trust must be
9 11 brought in the District Court of . . . County, Iowa, within the
9 12 later to occur of sixty days from the date of second
9 13 publication of this notice, or thirty days from the date of
9 14 mailing this notice to all heirs of the decedent, spouse of

9 15 the decedent, and beneficiaries under the trust whose
9 16 identities are reasonably ascertainable. Any claim suit not
9 17 filed within this period shall be forever barred.
9 18 Notice is further given that ~~all persons indebted to the~~
~~9 19 decedent or to the trust are requested to make immediate~~
~~9 20 payment to the undersigned trustee. Creditors having claims~~
9 21 any person or entity possessing a claim against the trust must
9 22 mail ~~them~~ proof of the claim to the trustee at the address
9 23 listed below via certified mail, return receipt requested-
~~9 24 Unless creditor claims are mailed by the later to occur of~~
9 25 sixty days from the second publication of this notice or
9 26 thirty days from the date of mailing this notice, ~~a if~~
9 27 required, or the claim shall be forever barred, unless
9 28 otherwise allowed or paid or otherwise satisfied.

9 29 Dated this .. day of, (year) ...
9 30 Trust
9 31
9 32 Trustee
9 33 Address:
9 34
9 35 Date of second publication .. day of ...,

10 1 (year) ...
10 2 6. The proof of claim must be in writing stating the
10 3 party's name and address and describing the nature and amount
10 4 of the claim and, if appropriate, accompanied by an affidavit
10 5 of the party or a representative of the party verifying the
10 6 amount that is due, or when the amount will become due, and
10 7 that no payments have been made on the claim that are not
10 8 credited, and that no offsets to the claim exist.

10 9 7. At any time after receipt by the trustee of a proof of
10 10 claim, the trustee may give the party submitting the claim a
10 11 written notice of disallowance of the claim. The notice shall
10 12 be given by certified mail, return receipt requested,
10 13 addressed to the party at the address stated in the claim, and
10 14 to the attorney of record of the party submitting the claim.
10 15 Such notice of disallowance shall advise the party submitting
10 16 the claim that the claim has been disallowed and will be
10 17 forever barred unless suit is filed against the trustee to
10 18 enforce the claim within thirty days of the date of the
10 19 mailing of the notice of disallowance. If suit is filed, the
10 20 provisions in chapter 633 relating to actions to enforce a
10 21 claim shall apply.

10 22 ~~5- 8. The claimant either must receive satisfaction of~~
10 23 ~~its claim, or must file suit against the trust to enforce~~
10 24 ~~collection of the creditor's claim within sixty days of~~
10 25 ~~mailing its claim to the trustee. The trustee and creditor~~
10 26 ~~may agree to extend the limitations period for filing an~~
10 27 ~~action to enforce the claim. If the claimant creditor fails~~
10 28 ~~to properly file its claim within the established time period~~
10 29 ~~or bring an action to enforce its claim within the established~~
10 30 ~~time period, the creditor's claim shall be forever barred.~~

10 31 Sec. 12. Section 633A.3111, Code Supplement 2005, is
10 32 amended to read as follows:
10 33 633A.3111 TRUSTEE'S LIABILITY FOR DISTRIBUTIONS.
10 34 1. A trustee who distributes trust assets without making
10 35 adequate provisions for the payment of ~~creditor claims debts~~
11 1 ~~and charges~~ that are known or reasonably ascertainable at the
11 2 time of distribution shall be jointly and severally liable
11 3 with the beneficiaries to the extent of the distributions
11 4 made.

11 5 2. A trustee shall be entitled to indemnification from the
11 6 beneficiaries for all amounts paid ~~to creditors for debts and~~
11 7 ~~charges~~ under this section, to the extent of distributions
11 8 made.

11 9 Sec. 13. Section 633A.3112, Code Supplement 2005, is
11 10 amended by striking the section and inserting in lieu thereof
11 11 the following:

11 12 633A.3112 DEFINITIONS == REVOCABLE TRUSTS.
11 13 As used in this subchapter:

11 14 1. "Charges" includes costs of administration, funeral
11 15 expenses including costs of monuments, and federal and state
11 16 estate taxes.

11 17 2. "Claimant" includes any interested party who possesses
11 18 any legal claim to trust property, the settlor's spouse, the
11 19 settlor's heirs as defined in section 633A.3109, and any other
11 20 person or entity with standing to challenge the trust,
11 21 including a creditor of the settlor and a personal
11 22 representative of the settlor's estate.

11 23 3. "Debts" includes liabilities of the settlor owed at
11 24 death that survive the settlor's death, whether arising in
11 25 contract, tort, or otherwise.

11 26 Sec. 14. Section 633A.4207, subsection 2, Code Supplement
11 27 2005, is amended to read as follows:

11 28 2. If the terms of the trust confer upon a person other
11 29 than the settlor of a revocable trust power to direct certain
11 30 actions of the trustee, the trustee shall act in accordance
11 31 with an exercise of the power unless the trustee knows the
11 32 attempted exercise violates the terms of the trust or the
11 33 trustee knows that the person holding the power is ~~incompetent~~
11 34 not competent.

11 35 Sec. 15. Section 633A.4213, unnumbered paragraph 1, Code
12 1 Supplement 2005, is amended to read as follows:

12 2 A trustee of a revocable trust shall keep the qualified
12 3 beneficiaries of the trust reasonably informed about the
12 4 administration of the trust and the material facts necessary
12 5 to protect the beneficiaries' interests.

12 6 Sec. 16. Section 633A.4213, subsections 3 and 4, Code
12 7 Supplement 2005, are amended to read as follows:

12 8 3. ~~A Except as provided in subsection 4, a trustee of an~~
12 9 ~~irrevocable trust~~ shall provide annually to each adult
12 10 beneficiary and the representative of any minor or incompetent
12 11 beneficiary who may receive a distribution of income or
12 12 principal during the accounting time period, an accounting,
12 13 unless an accounting has been waived specifically for that
12 14 accounting time period.

12 15 4. ~~This section does not apply to any trust where the~~
12 16 ~~grantor~~ If a settlor has retained the right, or has
12 17 transferred the right, to change the beneficiaries of the
12 18 trust or if a party is the holder of a general power of
12 19 appointment, the trustee shall only be required to report to
12 20 the settlor or the party.

12 21 Sec. 17. NEW SECTION. 633A.4707 PERSON CAUSING DEATH.

12 22 A person who intentionally and unjustifiably causes or
12 23 procures the death of another shall not receive any property,
12 24 benefit, or other interest as a beneficiary of a trust by
12 25 reason of such death. Any property, benefit, or other
12 26 interest that such person would have received because of such
12 27 death shall be distributed as if the person causing the death
12 28 died before the person whose death was intentionally and
12 29 unjustifiably caused or procured.

12 30 Sec. 18. Section 633A.6301, Code Supplement 2005, is
12 31 amended by adding the following new subsection:

12 32 NEW SUBSECTION. 5. A settlor shall not represent and bind
12 33 a beneficiary under this trust code with respect to the
12 34 termination or modification of a trust pursuant to section
12 35 633A.2202 or 633A.2203.

13 1 EXPLANATION

13 2 This bill relates to the probate and trust codes.

13 3 The bill amends provisions in the eligibility requirements
13 4 for medical assistance pursuant to Code chapter 249A and
13 5 provides that unless a surviving spouse who applies for
13 6 medical assistance has a premarital agreement that
13 7 specifically precludes the surviving spouse from taking the
13 8 decedent spouse's elective share, the failure of a surviving
13 9 spouse to take an elective share constitutes a transfer of
13 10 assets for purposes of determining eligibility for medical
13 11 assistance under Code chapter 249A.

13 12 The bill provides that the treasurer of state shall report
13 13 to the department of human services the name and social
13 14 security number of a person entitled to unclaimed property
13 15 under the uniform disposition of unclaimed property Act
13 16 pursuant to Code chapter 556. The bill provides that such a
13 17 report shall be confidential.

13 18 The bill authorizes the department of human services to
13 19 claim and receive assets of decedents under the treasurer of
13 20 state's unclaimed property program.

13 21 The bill specifies that a surviving spouse or the spouse's
13 22 conservator may voluntarily elect to take the testamentary or
13 23 intestate share, or an elective share pursuant to Code section
13 24 633.237.

13 25 The bill eliminates language relating to the court's
13 26 approval of a conservator's duties in regard to the revocation
13 27 or modification of a trust.

13 28 The bill specifies that unless the trustee has actual
13 29 knowledge that a person holding a power to revoke the trust is
13 30 not competent, the holder of the power has rights afforded the
13 31 beneficiary, the duties of the trustee are owed to the holder
13 32 of the power, and the trustee shall follow a written direction
13 33 given by the holder of the power without liability for doing
13 34 so, as long as the action is authorized by the trust.

13 35 The bill adds the terms "debts" and "charges" to sections
14 1 of the Code referring to the obligations of a trust and a

14 2 deceased settlor that can be recovered from the settlor's
14 3 revocable trust. The terms are also added for purposes of
14 4 classification and order of payment of debts and charges
14 5 against a settlor's estate. The bill provides definitions of
14 6 such terms.

14 7 The bill includes specific notice and claim provisions
14 8 affecting creditors asserting claims against revocable trust
14 9 assets and specifies which notice provision applies to a
14 10 particular creditor and under what circumstances a creditor's
14 11 claims will be barred. The changes also specify how a
14 12 creditor must provide notice to a trustee of a claim, the
14 13 procedure for a trustee to deny a claim, the time limit for a
14 14 creditor to contest a denial of a claim, and how the one-year
14 15 statute of limitations affects a creditor who asserts a claim
14 16 against the assets of a trust.

14 17 The bill specifies that if the terms of the trust give a
14 18 person other than the settlor of a revocable trust power to
14 19 direct certain actions of the trustee, the trustee shall act
14 20 in accordance with an exercise of the power unless the trustee
14 21 knows the attempted exercise violates the terms of the trust
14 22 or the trustee knows that the person holding the power is not
14 23 competent.

14 24 The bill specifies that a trustee's duty to keep the
14 25 beneficiaries of the trust informed about the administration
14 26 of the trust and material facts necessary to protect the
14 27 beneficiaries' interests applies to an irrevocable trust. The
14 28 bill also specifies persons to whom the trustee shall send the
14 29 trustee's report for trusts in which a settlor has retained
14 30 the right to change a beneficiary or where a person is a
14 31 holder of a general power of appointment.

14 32 The bill provides that a person who intentionally and
14 33 unjustifiably causes or procures the death of another shall
14 34 not receive any property, benefit, or other interest as a
14 35 beneficiary of a trust by reason of such death. Any property,
15 1 benefit, or other interest that such person would have
15 2 received because of such death shall be distributed as if the
15 3 person causing the death died before the person whose death
15 4 was intentionally and unjustifiably caused or provoked.

15 5 The bill provides that a settlor shall not represent and
15 6 bind a beneficiary under this trust code with respect to the
15 7 termination or modification of a trust.

15 8 LSB 5256SC 81

15 9 rh:rj/sh/8